

**JOINT MEETING OF CITY OF SAINT MARYS COUNCIL
AND PLANNING COMMISSION**

MARCH 29, 2011

CALL TO ORDER

A Joint meeting of City Council and the Planning Commission of the City of Saint Marys was called to order by Mayor Sally Geyer on Tuesday, March 29, 2011 at 7:00 p.m. The meeting was held in the Council Room of City Hall, 11 LaFayette Street. Notice of this meeting was sent to Council and the Planning Commission on March 24, 2011, posted at City Hall, and published in the Daily Press.

**ROLL CALL
Council**

Present: Mayor Sally Geyer, Bob Roberts, Daniel Hepner, Richard Dornisch, Richard Gabler, Jr., Solicitor Jacob, and Manager David Greene. Dennis Nero and Steven Skok were excused.

Planning Commission

Present: Bill Mills, Jude A. Weis, Bruce Gerber, Jude Gleixner, Michael Lecker, Thomas Farley, Matthew Quesenberry, and Matt Pfeufer. Pat Sherry and Bob Mohr were excused.

VISITORS

Visitors included: Mike Brock and Richard Sadley. Devin Brock did not sign in.

**PRESENTATION AND
DISCUSSION**

Mayor Geyer stated the Oil and Gas Committee consisted of Matt Quesenberry of the Elk County Planning Department, Matt Pfeufer, City Zoning Officer, Dan Hepner, City Councilman, and Mark Jacob, City Solicitor.

Matt Pfeufer

Matt Pfeufer presented the following information and comments regarding the PA Oil and Gas Act and Local Ordinances.

The PA General Assembly has delegated the PA DEP to oversee the development of oil and gas wells throughout the state. PA DEP regulates oil and gas well development through the PA Oil and Gas Act, Act 223 of 1984 as amended. Section 601.602 of the PA Oil and Gas Act states:

Except with respect to ordinances adopted pursuant to the Pennsylvania Municipalities Planning Code and the Flood Plain Management Act; all local ordinances and enactments purporting to regulate oil and gas well operations regulated by this act are hereby superseded. No ordinances or enactments adopted pursuant to the aforementioned acts shall contain provisions which impose conditions, requirements or limitations on the same features of oil and gas well operations regulated by this act or that accomplish the same purposes as set forth in this act. The Commonwealth, by this enactment, hereby preempts and supersedes the regulation of oil and gas wells as herein defined.

First off, this section of the PA Oil and Gas Act expressly states that the regulation of the same features of oil and gas wells by local municipalities is superseded, and that the Commonwealth preempts and supersedes the regulation of oil and gas wells. A municipality cannot impose regulations on oil and gas well development if the Oil and Gas Act already

JOINT MEETING OF CITY OF SAINT MARYS COUNCIL
AND PLANNING COMMISSION

MARCH 29, 2011

contains the same regulations. Some regulations contained within the PA Oil and Gas Act are: well permits, local municipal notification, well registration, well location setbacks from buildings, streams, and water supplies; well site restoration, well casing requirements, plugging requirements, bonding, and periodic inspections. Combining Section 601.602 and the remainder of the PA Oil and Gas Act; the committee had to consider the aforementioned items as off-limits to regulation by a local municipal ordinance.

Also mentioned in 601.602, is the statement that no (local) ordinance or enactment may impose conditions that accomplish the same purpose as set forth in the PA Oil and Gas Act. The purposes of the PA Oil and Gas Act are expressly stated in Section 601.102, Declaration of Purpose:

- 1.) Permit the optimal development of the oil and gas resources of Pennsylvania, consistent with the protection of health, safety, environment and property of the citizens of the Commonwealth.
- 2.) Protect the safety of personnel and facilities employed in the exploration, development, storage, and production of gas or oil or mining of coal.
- 3.) Protect the safety and property rights of persons residing in areas where such exploration development, storage or production occurs.
- 4.) Protect the natural resources, environmental rights, and values secured by the Pennsylvania Constitution.

Comments

The committee has struggled to justify any of its recommendations or the draft ordinance as not accomplishing one these purposes, however, it was encouraged by the study of several recent PA Supreme Court cases in which a local oil and gas drilling ordinance was upheld as legal. The court cases seem to suggest that some local control is allowable, specifically through zoning ordinances, even though they would accomplish similar purposes as the PA Oil and Gas Act. In this context, the committee strived to develop regulations that would be legally defensible and provide some measure of oversight on oil and gas development within the City.

Mark Jacob added the Courts were stating some of the regulations thru zoning were enforceable.

Matt Quesenberry commented the use of zoning, and understanding the best use of that tool, was to obtain the goal of better ability to permit, regulate and provide for the oil and gas development within the City.

Water Quality

- 1.) PA DEP has jurisdiction under the Oil and Gas Act
Sec. 601.205. Well location restrictions
Sec. 601.207. Protection of fresh groundwater; casing requirements
Sec. 601.208. Protection of water supplies
- 2.) Consider providing written notification to landowners within proximity of an anticipated

**JOINT MEETING OF CITY OF SAINT MARYS COUNCIL
AND PLANNING COMMISSION**

MARCH 29, 2011

natural gas drill site.

3.) Consider a new Water Resource Protection Zone.

Discussion

The City could send notification to residents when a permit for drilling was obtained. The notification would include residents within a designated area surrounding the well site that relied on a private water source. The notification would enable the residents to have their water tested before any drilling occurred.

The notification could be sent to residents within 1000 feet of a well head or possibly from the property line.

Also consider sending information to residents regarding water testing options.

Notifications could be sent to all residents within the specified area or only those utilizing a private water source.

Water Quantity

1.) PA DEP requires a Water Management Plan be provided prior to allowing any water withdrawal.

2.) Local and/or county government comments may be submitted to DEP under Act 14 notification. (Acts 67, 68, and 127 of 2000, which amends the MPC directs state agencies to consider comprehensive plans and zoning ordinances when reviewing permit applications.)

Discussion

Matt Quesenberry explained which zoning districts that would or would not allow drilling. The outlying Rural Conservation district also includes the reservoir. Redistricting the watershed for the reservoir could be considered.

The St. Marys Area Water Authority should currently have boundaries, but because of the unique situation, a suggestion of a water resource protection zone should be considered.

Clarification was made that the protection zone would affect any surface improvement, not just drilling, although some could be grandfathered.

A source water protection plan would delineate the zoning issue, and a grant program through DEP could fund a study to determine the water resource protection zone.

The water quantity cannot be regulated with zoning as to where water is obtained.

Matt Pfeufer explained the definitions of Permitted Uses, Special Exceptions, and Conditional Uses.

Site Design and Installation
Noise

1.) Difficult to properly ascertain/remedy potential violations

2.) Short term duration of potential problem.

**JOINT MEETING OF CITY OF SAINT MARYS COUNCIL
AND PLANNING COMMISSION**

MARCH 29, 2011

	3.) May be addressed via "conditional use" approval.
Light	<ol style="list-style-type: none"> 1.) Difficult to properly ascertain/remedy potential violations 2.) Short term duration of potential problem. 3.) May be addressed via "conditional use" approval.
Screening and landscaping	1.) May be included as a sub-section of the proposed Oil and Gas Development zoning amendment.
Traffic impacts	<ol style="list-style-type: none"> 1.) Is provided for under Section 320 Required Traffic Impact Reports of the zoning ordinance. 2.) Requiring a Traffic Impact Study (TIS) is not applicable to "sister" uses such as mining, timber harvesting, etc.
Setbacks	<ol style="list-style-type: none"> 1.) PA DEP has jurisdiction under the Oil and Gas Act Sec. 601.205. Well location restrictions 2.) May be possible to establish minimum setbacks from other features.
Zone Regulations/Specific Use Criteria	<ol style="list-style-type: none"> 1.) Oil and Gas Development similar in scope and purpose to Mining, Quarrying and Related Processing Facilities. 2.) Huntley & Huntley vs. Oakmont Borough says municipal zoning ordinances can permit gas drilling and wells in certain zoning districts and not in others, where the intent is to promote community development objectives. 3.) Consider allowing oil and gas drilling within the Rural Conservation, Industrial, Limited Industrial Zones by conditional use.
Population density overlay	<ol style="list-style-type: none"> 1.) Difficult to determine an agreed density threshold. 2.) May not have reliable or consistent data sets. 3.) May not be stable over time. 4.) May be addressed via "conditional use" approval.
"Concentric ring"	1.) May not guarantee that oil and gas drilling is appropriately directed.
Re-district certain areas of Rural Conservation to Residential Conservation.	<ol style="list-style-type: none"> 1.) May not be legal under the MPC (spot zoning). 2.) Difficult to determine appropriate location(s).
Discussion	<p>Conditional use could impose restrictions based on location for noise and light issues.</p> <p>The current zoning language is vague regarding setbacks and will need to be clarified.</p>
Committee Recommendations	<p>The Oil and Gas Committee presented the following recommendations:</p> <ol style="list-style-type: none"> 1.) St. Marys City Manager should direct staff to provide written notification to landowners within proximity of an anticipated natural gas drill site. Such notification would be forwarded once a permit application is received.

**JOINT MEETING OF CITY OF SAINT MARYS COUNCIL
AND PLANNING COMMISSION**

MARCH 29, 2011

- 2.) The St. Marys Planning Commission should recommend that City Council amend the current St. Marys Zoning Ordinance #227 to include oil and gas development and their related processing facilities as permitted by conditional use in the Rural Conservation, Industrial and Limited Industrial.
- 3.) St. Marys City Council should accept the recommendations of the St. Marys Planning Commission and adopt the proposed amendment to the current St. Marys Zoning Ordinance #227 as prepared and submitted by the St. Marys Planning Commission.
- 4.) St. Marys City Council should retain a consultant with expertise in zoning and natural gas drilling to review the findings of the Oil and Gas Task Force, research and answer questions, propose additional findings that may have been missed, and help provide guidance to ensure that all proper procedures are followed in moving this process to a successful conclusion.
- 5.) The St. Marys Planning Commission, St. Marys City Council and all other interested stakeholders should work with the St. Marys Water Authority and other parties with knowledge of the watershed and water resources to create a new Water Resource Protection Zone.

Closing Comments

The Committee recommendations will be reviewed by the Planning Commission. Once reviewed by the Planning Commission consideration may be given to forward their recommendations to an outside consultant for review. Council will receive all recommendations for consideration to act upon.

CITIZENS COMMENTS

Mike Brock


Mike Brock approached and thanked the committee for all their hard work. He was concerned with the light and noise issue being considered as short term activities. He thought a consultant should be considered to look at other options.

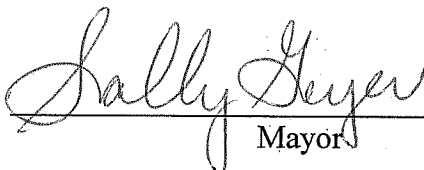
Devin Brock

Devin Brock questioned if a "conditional use" could be rescinded, and it was determined it could be rescinded if violations were occurring.

ADJOURNMENT

Richard Dornisch made a motion to adjourn the meeting.


Recording Secretary


Mayor